



BILLING CODE: 4410-09-P

**UNITED STATES DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Abolghasem Rezaei, M.D.
Decision and Order**

On November 16, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Abolghasem Rezaei, M.D. (hereinafter, Registrant) of Lawton, Oklahoma. GX 1. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration, pursuant to which he is authorized to dispense controlled substances in schedules IV and V as a practitioner, on the ground that he does "not have authority to handle controlled substances in the State of Oklahoma, the State in which [he is] registered with the" Agency. *Id.* at 1.

More specifically, the Show Cause Order alleged that effective May 28, 2013, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (hereinafter, OBNDD) issued a Stipulation and Agreed Order to Registrant, pursuant to which his authority to dispense controlled substances in schedules II and III was suspended "for two years"; the Order then alleged that his Oklahoma registration "expired on October 31, 2014," and had not been renewed. *Id.* The Show Cause Order thus alleged that Registrant did "not have authority in Oklahoma to order, dispense, prescribe or administer any controlled substances," and that as a consequence, DEA "must revoke [his] . . . registrations." *Id.* (citing 21 U.S.C. §§ 802(21), 823(f), and 824(a)(3)).¹

Thereafter, a DEA Diversion Investigator (DI) determined that Registrant was no longer practicing at his registered location and was advised by Agents of the OBNDD that the premises

¹ The Show Cause Order also notified registrant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence for failing to elect either option. GX 1, at 2.

appeared vacant. GX 9, at 1. The DI did, however, obtain an address for Registrant in Lawton, Oklahoma, which appeared to be that of a residence, and mailed the Show Cause Order to Registrant by certified mail, return receipt requested to this address. *Id.* On November 30, 2015, the DI received back the signed return-receipt card. *Id.* According to the DI, “[t]he signature appeared similar to the signature of [Registrant] . . . on other DEA records, which [Registrant] signed.” *Id.* The DI also e-mailed the Show Cause Order to Registrant at an e-mail address which Registrant had listed when he applied for registration. *Id.*; GX 2, at 1; GX 8. According to the DI, “[t]he e-mailed copy was sent successfully on November 16, 2015, but I never received a response to” it. *Id.*

On January 5, 2016, the Government submitted its Request for Final Agency Action. Therein, the Government stated that neither Registrant, “nor anyone representing him[,] has requested a hearing or otherwise corresponded with DEA.” Req. for Final Agency Action, at 5. In its Request, the Government sought a final order revoking Registrant’s DEA registration based on the May 28, 2013 Stipulation and Agreed Order between the OBNDD and Registrant, as well as his act of allowing his state registration to expire on October 31, 2014. *Id.* at 3.

However, on March 21, 2016, the Government filed a further pleading. *See* Request for Dismissal of Order to Show Cause. Therein, the Government noted that effective March 4, 2016, Registrant had entered a subsequent Stipulation and Agreed Order with the OBNDD, pursuant to which the OBNDD agreed to renew his state registration subject to four conditions; the Government provided a copy of the Order with its filing. *Id.* at 2. Those stipulations were that Registrant shall: 1) “remain on probation for 18 months beginning on the date of entry of” the Order; 2) “be prohibited from ordering, storing, dispensing or administering” any controlled substances “during his probation”; 3) “be prohibited from” prescribing controlled substances in

schedule II or III “until January 1, 2017”; and 4) run a PMP report of “his own prescribing . . . at the end of each calendar month” and submit an “affidavit that he has reviewed the PMP” report to the OBNDD and state that it “accurately reflects the [controlled substance] prescriptions he has authorized.” *In re Rezaei*, Stipulation and Agreed Order, at 2 (OBNDD, Mar. 4, 2016).

Noting that the sole basis for this proceeding was Registrant’s lack of state authority and that the OBNDD’s Order has restored his authority to prescribe schedule IV and V controlled substances, the Government no longer seeks the revocation of Registrant’s DEA registration.² *See* Request for Dismissal of Order to Show Cause, at 3. Notwithstanding that the Government seeks an Order dismissing the Show Cause Order, it also requests an Order restricting Registrant’s DEA registration “to the extent of his controlled substances authorization under Oklahoma state law.” *Id.*

Based on the record submitted by the Government, I find that Respondent has been served in a constitutionally adequate manner and I find that service was effective no later than November 30, 2015. Based on the Government’s further representation that since the date of service, neither Registrant, nor anyone representing him, has either requested a hearing or

² The State Order, upon which this proceeding was based, contained numerous stipulated findings that clearly would have supported a *prima facie* case for revocation under the public interest standard of 21 U.S.C. § 824(a)(4). These include: 1) that during a November 5, 2012 inspection, an OBNDD Agent and Oklahoma Board of Medical Licensure Investigator had conducted an inspection of Respondent’s clinic and found that Demerol and other drugs were kept in a locked desk located in a common area of the clinic and that the key was kept in an unlocked drawer at the receptionist’s desk; 2) that “Respondent was unable to produce any . . . order forms, invoices, or inventories” for the drugs in the desk; 3) that Respondent stored other controlled substances in an unlocked cabinet in an area of the clinic which all employees, as well as construction workers who were renovating the clinic, had access to; 4) that Respondent also kept controlled substances in a large plastic storage box on a counter below the aforesaid cabinet; 5) that during the inspection, Respondent submitted to a urinalysis and tested positive for oxycodone and that he “did not have a valid prescription” for the drug; 6) that Respondent’s administration logs showed that “on at least 3 occasions,” controlled drugs “were administered to either [himself] or [his] wife”; 6) that there was no patient file for two patients who were listed in the administration log; 7) that the drug administration log listed 11 entries for Demerol injections for “skin care” but did not list a patient name; 8) that Respondent’s wife owned a skin care clinic that “had a separate address from the medical clinic” and which was unregistered, and that the OBNDD Agent inspected the clinic and found that controlled drugs were stored in an unlocked drawer in a treatment room and Respondent stated that the drugs had been prescribed but returned by his patients; 9) and that controlled drugs that were stored at the skin care clinic were either administered or dispensed to that clinic’s “clients without maintaining an administration log.” GX 6, at 1-4.

submitted a written statement in lieu of a hearing, I find that Registrant has waived his right to either request a hearing or to submit a written statement. I therefore issue this Decision and Final Order based solely on the Investigative Record submitted by the Government. I make the following findings.

FINDINGS

Registrant is the holder of DEA Registration #FR4496267, pursuant to which he is authorized to dispense controlled substances in schedules IV and V, at the registered address of Family Practice Clinic & Minor Emergency Medicine, 4645 W. Gore Blvd., Suite 1-2, Lawton, Oklahoma. GX 2. Registrant's registration does not expire until April 30, 2017. *Id.*

Registrant is also the holder of an active medical license issued by the Oklahoma State Board of Medical Licensure and Supervision. According to the Board's website, Respondent is now practicing at 2502 West Gore Blvd., Lawton, Oklahoma. *See* <http://www.okmedicalboard.org/licensee/MD/23655>. He has also recently obtained a new state registration from the OBNDD. However, Registrant's OBNDD registration prohibits him "from ordering, storing, dispensing, or administering [controlled substances] from any [s]chedule during his probation," which runs for 18 months beginning on March 4, 2016, and it further prohibits him "from authorizing prescriptions for [s]chedule II or [s]chedule III [controlled substances] until January 1, 2017." Stipulation and Agreed Order, at 2.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823, "upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." Moreover,

Congress has defined “the term ‘practitioner’ [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Likewise, the CSA conditions the granting of a practitioner’s application for registration on his/her possession of authority to dispense controlled substances under state law. *See* 21 U.S.C. § 823(f) (“The Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.”). And of further note, the CSA defines the term “dispense” as meaning “to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner.” *Id.* § 802(10) (emphasis added).

Thus, the Agency has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012). And because a practitioner’s authority under the CSA is based on his/her authority to dispense controlled substances under the laws of the State in which he practices, the Agency has further held that “to the extent a practitioner is not authorized under state law to dispense certain categories or schedules of controlled substances, he can no longer lawfully dispense them under federal law.” *Kenneth Harold Bull*, 78 FR 62666, 62672 (2013).

For the same reason, where a state board limits a practitioner’s controlled substance authority by prohibiting him from possessing controlled substances or by limiting his authority to prescribing, the practitioner’s authority under his DEA registration must also be so limited. *See, e.g., Steven M. Abbadessa*, 74 FR 10077, 10082 (2009) (noting ambiguity in state agency’s order

as to whether it authorized physician to administer controlled substances at his clinic and requiring him to provide evidence that such activity was authorized by the State prior to doing so); *cf. United States v. Moore*, 423 U.S. 122, 140-41 (1975) (“In the case of a physician, [the CSA] contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice. The federal registration . . . extends no further.”).

Accordingly, although the OBNDD’s Stipulation and Agreed Order effectively authorizes Registrant to prescribe schedule IV and V controlled substances, it affirmatively prohibits him from ordering, storing (possessing), administering and directly dispensing all controlled substances. While Registrant’s DEA registration does not authorize him to handle schedule II and III controlled substances in any manner, his registration currently provides authority for him to order, store, administer and directly dispense schedule IV and V controlled substances. Because Registrant’s DEA registration can only grant him authority to the extent that the State has granted him authority, I will order that his registration be restricted to authorize only the prescribing of controlled substances in schedules IV and V.

Also, in the event Registrant intends to seek authority to prescribe schedule II or III controlled substances upon the expiration of the OBNDD’s condition, he must apply for a modification of his DEA registration before doing so. *See* 21 CFR 1301.51. So too, in the event Registrant seeks to engage in the ordering, storing, dispensing or administering of any controlled substance upon the expiration of his probation, he must apply for a modification of his DEA registration before doing so. Finally, because the Oklahoma Medical Board’s records list Registrant’s practice address as being different from his DEA registered address, and it appears that Registrant is no longer practicing at the latter address, he is directed to inquire of the local

DEA office as to whether he must obtain a modification of his registration to reflect his new practice address. *See* 21 CFR 1301.12(a) & (b).

ORDER

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration# FR4496267 issued to Abolghasem Rezaei, M.D., be, and it hereby is, restricted to authorize only the prescribing of controlled substances in schedules IV and V. This Order is effective immediately.

Dated: April 21, 2016

Chuck Rosenberg

Acting Administrator

[FR Doc. 2016-09973 Filed: 4/27/2016 8:45 am; Publication Date: 4/28/2016]